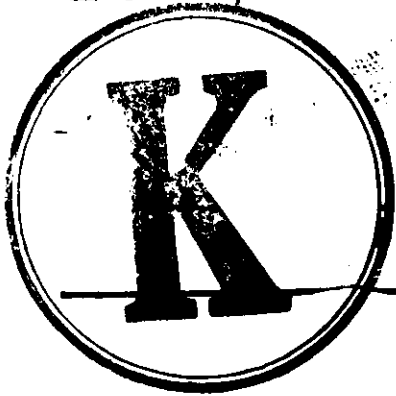


19⁴⁹



File No. O. Epidemic
Diseases 149
Legal DEPARTMENT
A BRANCH

Subject:—

Opinions Under the Epidemic Diseases
Act 1897

P 15/8

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Submitted with reference to H.& L.G.D. note at p.9-11 ante .

2. As a measure of decentralization of the Government work it is proposed to delegate some of the powers of the provincial Government to the Commissioners of Divisions. The Director of Public Health has in this connection suggested that the power of issuing notifications under the ~~P/A~~ Plague Regulations Cholera Regulations, Yellow fever Regulations, Influenza Regulations, Cerebro Spinal fever Regulations framed under the Epidemic Diseases Act, 1897 may be delegated to the Commissioner of Divisions. The short question for the R. L. A's consideration is whether such delegation is legally feasible.

3. Section 2 (1) of the Epidemic Diseases Act, 1897 runs as follows.

"When at any time the Provincial Government is satisfied that the Province or any part thereof is visited by or threatened epidemic disease, the Provincial Government if it thinks fit that the ordinary provisions of the law for the time being in force are insufficient for the purpose, may take or require or empower, any person to take such measures and by public ~~or~~ notice, prescribe such temporary regulations by the public or by any person or class of persons as it shall deem necessary to prevent the outbreak of such disease or the spread thereof and may determine in what manner and by whom any expenses incurred (including compensation if any) shall be defrayed".

As will be clear from the R.L. A's opinion Nos. 658-p, dated 14-10-1936, No. 5775 dt. 25-6-1940, action can be taken under the Epidemic Diseases Act, 1897, only if the Provincial Government thinks that the ordinary provisions of the law of the time being in force are insufficient for the purposes of taking action such as is contemplated under sec.2 of the Act. Under section 180(1) of the Bombay Municipal Boroughs Act, 1925 and section 145 of the Bombay District Municipal Act, 1901 the Municipalities concerned have to take ~~X~~ all such measures as the Commissioner of Division dees fit for the

purpose of preventing its meeting, or mitigating or suppressing the outbreak of any dangerous disease. It is probably in the non-Municipal areas that the Provincial Government may have to resort to the regulations framed under the Epidemic Diseases Act, 1897 (because the Bombay Local Boards Act, 1923 does not contain any such provision) and also in the Municipal areas in exceptional cases. The discretionary powers vested in the Provincial Govt. cannot be delegated to the Commissioners as such delegation would be against the spirit of the Act as it stands.

However the Provincial Government may suitably amend the Epidemic Diseases Act, 1897 in its application to this Province for achieving the purpose in view. The prevention of the extension from one unit to another of infectious or contagious diseases is one of the subjects in the concurrent list (vide item 30 List III, Sch. VII of the Government of the Govt. of India Act, 1935). The amendment may be on the lines of C.P. & Berar Act IV of 1945 or Punjab Act, Punjab Act, III of 1944.

Sd/-
9/7

In the absence any provision in the Epidemic Diseases Act 1897, authorising the Prov. Govt. to delegate its powers under Section 2 to any authority subordinate to it, it would not be legally feasible for the Prov. Govt. to delegate its powers to issue the regulations either to the Commr. or to any other officers. The view expressed by the Dy Secy. H. & G. Depp. in his note of 15-6-49 is correct. The papers may be "seen and returned".

Sd/-
9/7

Office of the R.L.A.

seen and returned.

The view expressed by the Deputy Secretary,
Health and Local Government Department in his
note dated the 15th June 1949 is correct.

Sd/-
13/7

Remembrancer of Legal Affairs;

U.R. to H. & L.G.D. No. 7912, dated the
14th July 1949.

5

LEGAL DEPARTMENT.

It appears that when cholera broke out in the City of Ahmedabad in the year 1948, in exercise of power conferred by sub-sec. (1) of sec. 2 of the Epidemic Diseases Act, 1897, the Bombay Government issued a notification (H. & L.G.D. Notfn. No. 4307/33, dated 13-7-48) prescribing the temporary regulations to be known as "Cholera Regulations" to be observed by the public of the City of Ahmedabad. The Collr. of Ahmedabad considers that as the said "Cholera Regulations" have not been withdrawn, they could be held to be applicable even now. The Collr. Requests Govt's orders whether his presumption is correct.

The H. & L.G.D. considers that since the Temporary Regulations are meant for an emergency only, they should be deemed to be ineffective after the emergency is over. It, therefore, considers that a fresh notification applying the Cholera Regulations should be issued. R.L.A. is requested to state whether the H. & L.G.D. view is correct.

There is no provision made in the "Cholera Regulations" prescribed by Govt. to indicate that they were intended to be kept in force for a definite period or until the emergency was over. Consequently, the notification prescribing the said Regulations could not be deemed to have lapsed but would be deemed to be in force until it was rescinded by Govt. under sec. 21 of the General Clauses Act, 1897. That being so, the presumption of the Collr. of Ahmedabad appears to be correct. However, ex majore cautela, the H. & L.G.D. may issue a fresh notfn. incorporating therein the additional clause recommended by the Collr.

Sd/- 10/9

DLR.

Reply may be:-

The view taken by H. & L.G. Dept
is correct. A fresh notification would
be necessary.

Sd/- 10/9

R.L.A.

Sd/-
10/9

U.R. to H. & L.G.D. No. 10502 dated the
16th September 1949.

(H)
OK.